

Executive Department
Austin, Texas
May 11, 1937.

To the Forty-fifth Legislature of the State of Texas:

I am today disapproving and vetoing House Bill No. 518 for the following reasons:

1.

This bill authorizes the Commissioners' Court of Trinity County to condemn rights-of-way for roads through private property holdings so as to enable the general public, according to the recited purposes of the bill, to reach the Neches river to fish. A similar bill applying to Leon and Madison Counties was passed two years ago, but no opposition or protest was made to it; and therefore its defects were not made apparent at the time.

The State Game, Fish and Oyster Commission has requested the veto of this Bill in a written communication to me reading as follows:

"This letter is written to request the veto of House Bill No. 518 by Loggins, which is a special law giving authority to the Commissioners' Court of Trinity County to condemn right-of-way through private property holdings on the Neches river in Trinity County.

"We recognize that the general law of this State, as it now exists, provides that the Commissioners' Court of any county may condemn road right-of-ways whenever a public necessity exists for such right-of-way and, therefore, if there is any public necessity for the road in Trinity County the Commissioners' Court at the present time has all of the authority that may be needed.

"If a road is opened along-side the Neches river and other roads are opened to reach the Neches river for each five miles of the length of such river in Trinity County, as the Act contemplates, the task of protecting game in that section of the State will be much more difficult.

"By the creation of large game preserves in Trinity County a considerable stock of game has been built up and with continuous protection in the large land areas adjacent to the Neches river such stock of game will overflow to adjacent areas where it will be of general benefit to the entire public.

"Game law observance in Trinity County has not been generally good. There have been frequent encroachments upon the State game preserve properties, cutting of fences and other major depredations, upon occasion making it necessary to assign State Rangers to duty in that county to procure ordinary law enforcement.

"Making the large land holdings easily accessible to the public by the establishment of additional roadways, which may not at all be a public necessity, would certainly intensify, if not nullify, efforts to protect game in that section of the State. It is also recognized that the creation of additional road-ways to reach the Neches river in Trinity County would make more difficult game protection efforts in Angelina County on the other side of the Neches river.

"We believe that the Commissioners' Court and the District Court of the district in which Trinity County is located is competent to determine whether or not public necessity exists for the creation of additional road-ways to the Neches river in Trinity County, and yet it is clear that House Bill No. 518 takes from the Commissioners' Court and the other courts of this State the responsibility of determining whether or not public necessity exists for the creation of additional road-ways to the Neches river in Trinity County, the Legislature of this State, through such purported local House Bill No. 518 having assumed that responsibility.

"We believe that House Bill No. 518 would create an unwise precedent and might be the entering wedge for additional legislation of this type, and assumption of responsibility by the Legislature of fact-determining which our Government contemplates should be determined locally by properly constituted authorities."

In addition to these facts recited in the communication from the Game, Fish and Oyster Commission, I am informed that the premises in question are near a State game preserve. I am a believer in conservation of our resources, and particularly our wild life. Experience has demonstrated that

progress in this direction has been made largely due to the efforts of private landowners who have themselves financed protection and propagation on their own premises. I feel that to open up roads of this kind where no real public necessity exists will certainly tend to destroy the splendid work that has been done. I do not feel it is fair to landowners to make it possible to destroy the things they have accomplished. I feel the State should assist rather than handicap them in those efforts.

2.

At the present time under the General Laws in this State the commissioners' court has a right to condemn rights-of-way for road purposes whenever public necessity exists therefor. I do not believe the Legislature by the passage of such an act as this should declare that such public necessity exists when the Commissioners' Court in that county has the power to do so.

3.

Section 9 of this Bill authorizes the Commissioners' Court to order the opening of "a public road sixty (60) feet in width running parallel with and adjacent to the bank of any statutory navigable stream of this State for such distance as the Court may deem necessary, said right-of-way to be used for access to said public streams, and for camping purposes." Under this it would be possible for the commissioners' court to open up so-called public roads for camping purposes all along the river in Trinity County for some seven miles, as I understand. It would be possible for them to cut off the riparian landowners from entry or access themselves to the waters of the river. I do not believe this is right, or fair. The grant of power is too broad.

While it is true the Act authorizes compensation, yet practical experience has demonstrated what such landowners may expect from a jury in a community not interested in game conservation, but rather interested in establishing a site for fishing and camping purposes, which incidentally would afford the opportunity pointed out by the Game Department for unlawful hunting and trespassing upon the lands of other people.

4.

I seriously doubt the authority of the Legislature to enact this special legislation, applying alone to Trinity County, which authorizes the condemnation of rights-of-way for a road (which the county is not required to maintain) and for camping purposes, under Article 3, Section 56, of the Constitution, reading as follows:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys."

It is true that in Article 8, Section 9, the Constitution provides: "that the Legislature may pass local laws for the maintenance of public roads and highways without the local notice required for special or local laws;" but this Bill is not for the "maintenance" of public roads and highways. It is for the laying out of same; and, indeed, the Bill expressly provides that the county shall not be required to maintain said highways.

For the reasons stated, the Bill is accordingly disapproved, vetoed and returned to the House of Representatives in which it originated.

Respectfully submitted

JAMES V. ALLRED

Governor of Texas